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JAN 26 1983
ALEXANDER L. STEVAS,
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NO. 82-1025

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

CHURCH OF SCIENTOLOGY MISSION OF DAVIS
and MARTIN SAMUELS,

Petitioners,

-v.-

JULIE CHRISTOFFERSON,

Respondent.

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF THE STATE OF OREGON

MOTION TO FILE AMICUS CURIAE BRIEF PRIOR TO CONSIDERATION OF JURISDICTIONAL STATEMENT

Eric M. Lieberman
Counsel for
Petitioners
30 E. 42nd Street
New York, NY 10017
(212) OX7-8640

Joel Kreiner
Counsel for Amicus Curiae
6255 Sunset Boulevard
Suite 2000
Los Angeles, CA 90028
(213) 461-4961

Garry P. McMurry
Counsel for Respondent
1600 Benjamin Franklin Plaza
One S. W. Columbia
Portland, Oregon 97258
(503) 226-6400

MOTION

Churches for Fairness, an ad hoc group of religious organizations and ministers, moves under Rules 36 and 42 of this Court to file the accompanying Brief of Amicus Curiae.

In support hereof, Amicus represents that counsel for the Petitioner, Church of Scientology, Mission of Davis, has consented but that counsel for Respondent, Julie Christofferson, has not.

As noted in the "Interest of Amicus Curiae" section of the accompanying brief, the Christofferson case raises issues vitally important to the well-being of organized religions in general and Amicus in particular.

Petitioners' Jurisdictional Statement and Brief was received by Respondent on December 17, 1982 and, therefore, this motion to file

Brief of Amicus Curiae is filed within the time allowed by Rules 28 and 36 of this Court.

Respectfully Submitted:

Joel Kreiner
Counsel for Amicus Curiae
6255 Sunset Boulevard
Suite 2000
Los Angeles, CA 90028
Tel: (213)461-4961

CERTIFICATE OF SERVICE

I, JOEL KREINER, a member of the bar of this Court hereby certify that all parties required to be served with this MOTION TO FILE BRIEF OF AMICUS CURIAE have been served by mail pursuant to Rule 28(3) of the Rules of this Court. The parties to be served are:

Eric Lieberman, Esq.
Counsel for Petitioners
30 East 42nd Street
New York, New York 10017
Tel: (212) OX7-8640

and

Garry McMurry, Esq.
Counsel for Respondent
1600 Benjamin Franklin Plaza
One S. W. Columbia
Portland, Oregon 97258
Tel: (503) 226-6400

I further certify that on January 18. 1983, I served the foregoing MOTION TO FILE BRIEF OF AMICUS CURIAE on the attorneys listed above, by mailing to said attorneys three true and correct copies thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorneys at their regular office addresses listed above and deposited in the post office at Los Angeles, California on said day. Between said post office and the address to which said copies were mailed, there is a regular communication by U. S. Mail.

DATED: January 18, 1983.

JOEL KREINER
Counsel for Amicus Curiae

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BRIEF OF AMICUS CURIAE CHURCHES FOR FAIRNESS

Eric M. Lieberman
Counsel for
Petitioners
30 E. 42nd Street
New York, NY 10017
(212) OX7-8640

Joel Kreiner
Counsel for Amicus Curiae
6255 Sunset Boulevard
Suite 2000
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(213) 461-4961

Garry P. McMurry
Counsel for Respondent
1600 Benjamin Franklin Plaza
One S. W. Columbia
Portland, Oregon 97258
(503) 226-6400

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MEMBERSHIP OF AMICUS CURIAE

Religious Organizations

AMERICAN CHRISTIAN FREEDOM INC.
9426 S. Western
Los Angeles, CA
Reverend U. J. Fields

AMOS C. M. E. CHURCH
2445 W. Washington Street
Los Angeles, CA
Reverend J. B. Reese

CALVARY BAPTIST CHURCH
12926 Vaughn Street
San Fernando, CA
Reverend William Broadous, Pastor

FIRST AFRICAN METHODIST EPISCOPAL CHURCH
2270 S. Harvard Street
Los Angeles, CA
Reverend Cecil Murray

FIRST MEXICAN BAPTIST CHURCH
301 37th Street
South Richmond, CA
Jorge Aledo, Pastor

FIRST SOUTHERN BAPTIST CHURCH
976 South Van Ness Avenue
San Francisco, CA 94110
Reverend Daniel Sotelo, Pastor

FIRST SPANISH AMERICAN BAPTIST CHURCH
2970 Folsom Street
San Francisco, CA
Reverend Jorge Barahona, Pastor

HAZEL AVENUE BAPTIST CHURCH
5010 Hazel Avenue
Sacramento, CA
Reverend Edgar R. Koons, Pastor

IMMANUEL TEMPLE C. M. E. CHURCH
17288 Stoddard Wells Road
Victorville, CA
Reverend James E. Markham, Pastor

PACOIMA MINISTERS ASSOCIATION
13451 Vaughn Street
San Fernando, CA 91340
Reverend Jules S. Bagneris Jr., Pres.

PILGRIM BAPTIST CHURCH
950 E. 45th Street
Los Angeles, CA
Reverend A. G. Kendrick, Pastor

PORTOLA BAPTIST CHURCH
225 Pioche Street
San Francisco, CA 94134
Reverend Angel Martinez, Pastor

VICTORY ASSOCIATES
1130 Arlington
Los Angeles, CA
Reverend Kenneth Frazer

Individuals

Reverend Dr. Albert W. Welch
ALLSTON CONGREGATIONAL CHURCH
Allston, MA 02134

Donald L. Odens, Pastor
BEREAN BAPTIST CHURCH
8825 W. Broadway
Brooklyn Park, New Mexico 55445

Kenneth D. McGuffey, Chaplain,
Major, USAF
SOUTHERN BAPTIST INSTALLATION CHAPLAIN
Bergstrom Air Force Base, Texas 78743

George W. Webber, President
NEW YORK THEOLOGICAL SEMINARY
Five West TWenty-Ninth Street
New York, New York 10001
Professor George W. Webber

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BRIEF OF AMICUS CURIAE
CHURCHES FOR FAIRNESS

I.

INTEREST OF AMICUS CURIAE

Amicus Curiae, Churches For Fairness, is an ad-hoc group of recognized and organized

religious entities and ministers that is deeply concerned about the viability of religious fund-raising, counseling, and services in a suit-happy society. In recent years, organized religions have become the victims of lawsuits alleging "brainwashing", "therapeutic malpractice", and "fraud" over matters involving religious dogma and practice. The case of Christofferson v. Church of Scientology, 57 Or App 203, 644 P2d 577 (1982) is but an example of this trend.

Organized religions today basically are at a loss to know how to protect themselves from such litigation because the ground rules are yet to be written. Is a church liable because its minister tells a battered wife that her place is with her husband and that she is to remain at home even if her husband is physically violent towards her? Does the answer to this question depend upon whether the advice given is in accordance with, or

contrary to, church dogma? Is a church liable for fraud if, in a fund-raising campaign, one of its volunteer workers falsely tells donors that the funds will be used to buy baseball equipment for impoverished teenagers, instead of stating the true purpose of purchasing the minister an automobile for official use? Does liability change if the donor is, or is not, a church member? What happens when, as in Christofferson, a church member enrolls in known religious courses in order to improve her life and, when she begins to doubt whether the course is in fact religious, a minister allegedly tells her the course is "scientific" and personally guarantees that her life will improve? Is the church liable for fraud if the member's life does not improve? If so, why? Are the members also liable? Who pays the judgment? Why doesn't the Constitutional protection of Freedom of Religion prevent lawuits against a church unless the church

itself directly authorized, participated in, or subsequently approved the conduct complained of?

These questions are of concern to all the religious bodies represented by Churches For Fairness. The Christofferson case presents an opportunity for the United States Supreme Court to not only establish national constitutional guidelines for answering those questions, it also presents an opportunity for this Court to firmly declare that organized religion cannot be crushed by the weight of a suit-happy society, and is civily responsible only for its own conduct. The participants in Churches For Fairness are listed on the forepages of this brief.

II.

SUMMARY OF ARGUMENT

1. Fund-raising by a church is, in fact, a necessary religious activity;

2. Civil judges and juries have no

authority to contradict a church's official statement that one of its ministers undertook a church activity with a religious purpose;

3. Liability should not be imposed upon a religious organization for the misrepresentations of its ministers unless the organization on the whole directed, ratified, or participated in the misrepresentation.

III.

ARGUMENT

In the recent case of Christofferson v. Church of Scientology a member of a recognized religion who made donations in return for Church study courses and religious services received a jury verdict of $900,000 in punitive[1] damages against the Church. The award was given because a minister supposedly told the member, when she began to doubt the

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[1] Punitive damages are awarded to punish wrongdoers, and have no relationship to any actual loss. Gertz v Robert Welch, Inc., 418 US 323, 350 (1976).

usefulness of the services, that the courses and services weren't really religious, but were scientific, and that it was a scientific fact that her life would be improved if she completed the course work. When the member's life did not improve as much as she wanted, she sued the Church and its top administrative officer for civil fraud. The minister who allegedly told her that the services were not religious but scientific was not sued at all.

The Church and its top officer appealed, and the jury award was set aside by the Oregon Court of Appeals. However, the judges sent the case back for a second trial, saying that it was up to the jury to decide whether the courses and services were "offered for a wholly secular purpose", such as "solely to obtain money" from the church member. If so, the Church and its top officer could be sued and held responsible even if the minister had wrongfully denied that his church's services

were religious.

It is the position of Amicus that the Oregon ruling is clearly wrong and contrary to the First Amendment of the United States Constitution for three reasons. First, fund-raising is a necessity of life for any organized religion and is not, therefore, simply a "secular purpose". Second, neither civil judges nor civil juries have any business nor power to decide with what purpose church activity is carried on. The internal workings of a religious body is the legal concern of only that body. Third, if a minister commits a civil fraud or other wrong perhaps he can be sued, but the church itself and its members should not be held liable for his wrongdoing unless the church or membership authorized his conduct, participated in his conduct, or later ratified his conduct with knowledge of the harm he has done. The church should not be held responsible for damages

caused by a minister acting contrary to church policy, or by some other conduct, simply because the minister is an agent or employee of the church.

Fund-raising. Almost all religions would collapse if they did not raise funds. In 1943 the United States Supreme Court recognized that "a religious organization needs funds to remain a going concern" and that if solicitation of funds deprived religious groups of their First Amendment protection, then freedom of religion would be available only "to those who can pay their own way." Murdock v. Pennsylvania, 319 US 105, 111 (1943). Any contention by the Oregon Court, then, that fund-raising is "wholly secular" and not protected by Freedom of Religion is simply wrong. If a church is to be liable in damages for accepting a donation for its services, there must be some basis other than the mere fact the money is accepted.

Internal Church Matters. If a civil judge or jury is allowed to decide whether or not a church activity was done with a religious purpose, then that judge or jury is empowered to impose his or its notions of what is or should be religious on someone else. That should not be allowed under our Constitution.

> "Neither the courts nor the administrative agencies of the state or its subdivisions may go behind the declared content of religious beliefs anymore than they may examine their validity . . . . It is for religious bodies themselves, rather than the courts or administrative agencies, to define, by their teachings and activities, what their religion is." Holy Spirit Association v. Tax Commission of the City of New York, 55 NYS2d 512 (1982).

Therefore, if the official leadership of a church says that funds were raised and utilized for a religious purpose, no civil judge or jury should be able to say that the funds were raised or utilized for a secular purpose. To give such power to a civil court is to give it power to enforce conformity in

religious structure and activity. Such power is clearly forbidden by the Establishment Clause of the First Amendment. No law can be used to "establish" a particular form or type of religion, or to require diverse religions to conform to a norm.

Church Responsibility for the Conduct of a Minister. Everyone is getting sued these days, including the clergy. Ministers have been sued for giving poor advice to parishioners who seek comfort from their daily troubles. The Oregon case is but a variant on a theme, and is very dangerous to the viability of organized religion. There, the church and its top officer, not the wrongdoing minister, were sued and assessed a $900,000 punitive damage award even though there was no evidence that they authorized, participated in, or ratified his supposed false statement to the church member. In other words, just because the minister was working on behalf of

the church, the church was held responsible for all his conduct. Surely, however, the minister was acting contrary to the policy of the church in question. No church denies the religiosity of its own services. There is no justice in punishing innocent church members for the wrongs of someone who is acting contrary to church policy. No such liability is imposed in the civil rights area, and it should not be imposed in the religious freedom area. See, e.g., NAACP v. Clairborne Hardware Co., ____ US ____, 102 S. Ct. 3409 (1982); Healy v. James, 408 US 169 (1972); United Mine Workers of America v. Coronado Coal Co., 259 US 344 (1922). Rather, a church, like former Mayor Rizzo of Philadelphia, like New York City, and like the UMW should be liable for a wrong of its ministers only if the wrong was done "pusuant to official. . .policy" or if "a concerted design" by the church "existed to accomplish a wrongful objective." Rizzo v.

Goode, 423 US 362 (1976); Monell v. Deppartment of Social Services of City of New York, 436 US 658 (1978), UMW of America v. Coronado Coal Co., supra.

The Oregon Court unfortunately strayed from these principles and imposed liability on a church based on a theory lawyers call "enterprise liability". That theory reasons that as between an innocent injured person and an innocent profit-making business enterprise whose employee caused the injury, the law will require the business, and not the injured person, to bear the cost regardless of whether the employee was really carrying out his duties at the time he caused the injury. The courts have reasoned that profit-making enterprises can spread the risk of such injuries by factoring such monetary costs into the prices charged for goods and services; and, secondly, imposing liability on the enterprise for virtually all conduct of its

employees will force the enterprise to carefully select its employees and closely control and supervise their performance. See, Restatement (2d) Agency, Sec. 257, 258, 262.

The enterprise liability theory is appropriate in this country for profit-making concerns, but should be confined to such concerns. It has no place in the realm of religion. Civil courts cannot, under the First Amendment, seek to "control" religion in the sense of creating or enforcing internal rules, procedures, or checks. NRLB v. Catholic Bishop of Chicago, 440 US 490 (1979); Kedroff v. St. Nicholas Cathedral, 344 US 94 (1952); Watson v. Jones, 13 Wall. (80 US) 666 (1872). Further, churches simply are not "profit" makers engaged in an enterprise through which profits and losses may be allocated. Even those churches with ample financial resources utilize them not for profit, as that term is understood in this country, or for

distributing dividends to their members, but for service to God. Consequently, the theory used by the Oregon Court to impose liability on a religious organization does not fit the situation and, indeed, conflicts with the First Amendment.

IV.

CONCLUSION

The United States Supreme Court should review the Christofferson decision in order to set national guidelines protecting churches and congregations from the unauthorized misdeeds of their errant clergy. Otherwise, organized religion as we know it today will lose respect and will consequently be in jeopardy of fiscal bankruptcy.

Respectfully submitted,

Joel Kreiner
6255 Sunset Blvd.
Los Angeles, CA 90028
(213) 461-4961

CERTIFICATE OF SERVICE

I, JOEL KREINER, a member of the bar of this Court hereby certify that all parties required to be served with this BRIEF OF AMICUS CURIAE have been served by mail pursuant to Rule 28(3) of the Rules of this Court. The parties to be served are:

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Counsel for Petitioners
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DATED: January 18, 1983.

JOEL KREINER
Counsel for Amicus Curiae